IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Ehr et al.	Confirmation No.: 1216
Application No : 10/027,154	Art Unit: 3736
Filed: December 20, 2001	Examiner: Jonathan M. Foreman
For: Pressure-Sensing Guidewire and Sheath	

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF DATED NOVEMBER 8, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-compliant Appeal Brief dated November 8, 2007, in connection with the above-identified patent application, Appellants submit the following replacement sections for the Appeal Brief as follows

A Replacement Section for the Status of Claims begins on page 2 of this paper.

A Replacement Section for the Summary of Claimed Subject Matter begins on page 3 of this paper.

Remarks begin on page 6 of this paper.

Amendments to Status of Claims

Please amend Status of Claims (page 5 of the Appeal Brief as originally filed) as follows:

III. STATUS OF CLAIMS

Claims 1-30 were filed with this application, of which claims 1-9, 11-12, 15, 17-18, and 20-30 are cancelled. Currently, claims 10, 13-14, 16, and 19 are pending. All pending claims stand rejected in view of the cited prior art. The rejections asserted against claims 10, 13-14, 16, and 19 are hereby appealed. The currently pending claims are reproduced in the Claims Appendix to this Brief

Amendments to Summary of Claimed Subject Matter

Please amend Summary of Claimed Subject Matter (pages 7-8 of the Appeal Brief as originally filed) as follows:

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present disclosure is a medical device for use in angioplasty. More specifically, angioplasty has become a common place method of treating vascular disease. With vascular disease, plaque or other cells attach themselves to the interior of a blood vessel wall and thereby form a stenosis or occlusion. Depending upon the severity of the occlusion, angioplasty will be performed to dilate or otherwise open the stenosis to allow for greater blood flow and thus decrease the pressure within that particular vessel. This is typically performed by navigating a balloon catheter through the artery to the site of the occlusion, and then inflating the balloon (see specification, page 1, lines 15-23).

However, as these occlusions are nested deep within the tissue of the patient, it is advantageous to provide a mechanism by which the severity of the occlusion can be determined prior to performing any invasive surgery or angioplasty. The present disclosure allows for this function to be effectively accomplished. Specifically, the pending disclosure sets forth a medical device which measures the pressure within a vascular structure, particularly small blood vessels and arteries, where it is desired to perform an angioplasty. Once introduced, the device is able to measure blood pressure on both sides of the stenosis. If the blood pressure differential between the two sides is of a sufficient level, a physician will know that it is appropriate to perform an angioplasty and if the pressure differential is not of a particular level, other less invasive treatments can be considered (see specification, page 1, line 29 – page 2, line 7).

The claimed medical device is designed to be navigated through a clotted blood vessel as illustrated in Figures 1-3 of the pending application. One structural feature which allows for this function is the provision of a slidable tube within a sheath wherein the tube has one relatively long opening, and the sheath has two spaced apart openings (see specification, page 3, lines 7-17) Another is the cross-sectionally circular, low profile shape of the device as recited in the rejected claims (see specification, page 2, line 28 – page 3, line 4) Those claims are summarized below. The currently pending claims of this application include two independent claims 10 and 16, of which claim 10 is broader than, and encompasses, claim 16. Appellant hereby submits that all pending claims stand and fall with independent claim 10.

Independent claim 10 specifies a device for measuring blood pressure within a vascular structure, comprising: (1) a tubular sheath sized for insertion into the vascular structure, the tubular sheath including an open proximal end, a closed distal end, at least two axially spaced apart openings in a sidewall thereof, and an inside peripheral surface; (2) an elongated tube disposed within the tubular sheath and including an open proximal end, a closed distal end, a single opening in a sidewall thereof and an outside peripheral surface engaging the inside peripheral surface of the tubular sheath about the entire outside peripheral surface of the elongated tube, wherein the elongated tube being frictionally received within the tubular sheath thereby allowing the opening of the elongated tube to be selectively aligned with one of the axially spaced apart openings of the tubular sheath at a time and so that engagement between the inside peripheral surface of the tubular sheath and the outside peripheral surface of the elongated tube substantially prevents fluid communication between the inside peripheral surface of the tubular sheath and the outside peripheral surface of the elongated tube and through the tubular sheath; and (3) a pressure transducer in fluid communication with the elongated tube proximal end so that blood from the vascular

structure is communicated to the pressure transducer when the elongated tube opening is aligned with one of the tubular sheath openings, thereby to directly measure the blood pressure, wherein the blood pressure measuring device has a distal portion that is inserted into the vascular structure, and wherein an exterior surface of the distal portion of the blood pressure measuring device has a cross-sectional profile of a single circle. (See specification, page 2, line 28 – page 3, line 4; and page 5, line 23 – page 6, line 27, as well as FIGs. 1, 2 and 6).

Remarks

In the Notification of Non-Compliant Appeal Brief, the Office indicated that the Appeal Brief did not provide the status of all claims, and that the claimed inventor was not mapped to the specification by page and line number for independent claims 10 and 16. By way of this response, replacement sections for both are submitted. Pursuant to the provisions of MPEP 1205.03, replacement sections are preferred to a complete, amended brief.

In light of the foregoing, Appellant respectfully submits that the Appeal Brief, as amended, complies with all provisions of 37 C.F.R. § 41.37. Consideration of the Appeal Brief on its merits is respectfully solicited.

Dated: November 20, 2007

Respectfully submitted,

By _____
Thomas A. Miller
Registration No.: 40,091
MILLER, MATTHIAS & HULL
One North Franklin Street
Suite 2350
Chicago, Illinois 60606
(312) 977-9902
Attorney for Appellant